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**IN THE  
COURT OF APPEALS OF INDIANA**

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In Re the Matter of the Termination of the )  
Parent-Child Relationship of S.G.B., a Child, )  
and Sharlene Haven, Natural Mother, )

SHARLENE HAVEN, )

Appellant, )

vs. )

JASPER COUNTY DEPARTMENT OF )  
CHILD SERVICES, )

Appellee. )

No. 37A04-0606-JV-323

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APPEAL FROM THE JASPER CIRCUIT COURT  
The Honorable John D. Potter, Judge  
Cause No. 37C01-0602-JT-35

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**January 17, 2007**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**DARDEN, Judge**

## STATEMENT OF THE CASE

Sharlene Haven (“Mother”) appeals the termination of her parental rights as to her minor son, S.B.

We affirm.

## ISSUE

Whether there was clear and convincing evidence to support the termination of Mother’s parental rights.

## FACTS

S.B. was born on January 14, 1997, during the marriage of Sean Blankenship and Mother.<sup>1</sup> At some point, Mother and Blankenship divorced, and Mother and S.B. began living with Mother’s then-boyfriend, Wayne Haven, in Rensselaer.

In December of 2004, the Jasper County Office of Family and Children (the “OFC”) removed S.B. from Mother and Haven’s home because Haven physically abused S.B. on two occasions. Mother married Haven in June of 2005.

On February 15, 2006, the OFC filed a petition to terminate Mother’s parental rights. The trial court held a final hearing on May 15, 2006. Jamie Fleming, the case manager assigned to S.B., testified that the OFC developed a case plan for Mother “within 45 days after the removal [of S.B.] from the home, and then approximately six months thereafter.” (Tr. 7). Fleming testified that, pursuant to the case plan, Mother was “was entitled to one visit per week” with S.B. for approximately one hour, and the case

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<sup>1</sup> Mother and Blankenship have two children together: S.B. and Sc.B. Mother also has three other children. Blankenship voluntarily terminated his parental rights as to S.B. and Sc.B. on or about March 13, 2006. Mother’s parental rights as to her other four children have been terminated.

plan required Mother to take a parenting class, obtain a driver's license, get a job and secure permanent housing. (Tr. 7). According to Fleming, Mother did not follow the case plan other than "maintain[ing] somewhat of a visitation schedule." (Tr. 7). Fleming further testified that Mother failed to "keep in contact with the family case manager and supply, upon finding a job, documentation that related to employment, contact information, income, [or] driver's license." (Tr. 11). Fleming also testified that Mother had been "living out of the semi truck that her husband drove as part of his job," and to her knowledge, Mother had not secured a permanent residence. (Tr. 8). Fleming further testified that, as of the date of the final hearing, charges against Haven for the alleged abuse were pending.

Nancy Koedyker, a therapist who supervised Mother's visits with S.B., testified that Mother missed visitation eight times over the course of approximately four months because she was traveling with Haven. Koedyker also testified that when Mother did visit S.B., he was "very happy to see her; she was very happy to see [him]." (Tr. 25). Koedyker, however, expressed concern about Mother raising S.B. "with [Haven] around[.]" (Tr. 25).

Mother testified that she attended three or four parenting classes but had not completed the classes. According to Mother, she could not fully comply with the case plan because she "didn't have any transportation" due to the suspension of her driver's license in 1997. (Tr. 45). Mother testified that she did not have her driver's license reinstated because it cost "\$975," and she "wanted to save up money so [they] could buy a home." (Tr. 42). Mother further testified that she and Haven lived in Haven's semi-

truck for approximately three months, until they moved to Valparaiso in May of 2006. Mother testified that she had not yet secured employment.

In response to whether Mother would cease living with Haven if her parental rights were not terminated, Mother responded: “I don’t understand how I could do that, when I do not have a license.” (Tr. 36). Mother testified that “if [she] thought for one second that [Haven] would do anything to [S.B.], [she] would not be with [Haven] at this time. [She] would never have married him to begin with.” (Tr. 40).

On May 15, 2006, the trial court issued its order, terminating Mother's parental rights as to S.B. The trial court found, among other things, as follows:

[T]he services provided to assist the natural mother in fulfilling her parental obligations have either not been accepted or have failed.

The Court further finds that the conditions which caused the removal of the child have not been remedied, in that the mother . . . has now married and continues to live with the boyfriend who battered the child twice, causing the initial removal.

The Court further finds that the continuation of the parent-child relationship would pose a threat to the wellbeing of the child because the mother . . . has now married and continues to live with the boyfriend that battered the child twice, causing the initial removal.

The Court further finds that all other requirements of Ind. Code § 31-6-5 have been met, and that the termination of the parent-child relationship of the child and the natural mother would be in the best interest of the child.

(App. 4-5).

### DECISION

Although parental rights are of a constitutional dimension, the law allows for termination of these rights when parties are unable or unwilling to meet their

responsibility. *In re A.N.J.*, 690 N.E.2d 716, 720 (Ind. Ct. App. 1997). The purpose of termination of parental rights is not to punish parents but to protect children. *In re L.S.*, 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), *trans. denied, cert. denied*, 534 U.S. 1161 (2002).

When a county office of family and children seeks to terminate parental rights, the office must plead and prove in relevant part that:

- (B) there is a reasonable probability that:
  - (i) the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied; or
  - (ii) the continuation of the parent-child relationship poses a threat to the well-being of the child;
- (C) termination is in the best interests of the child; and
- (D) there is a satisfactory plan for the care and treatment of the child.

Ind. Code § 31-35-2-4(b)(2). These allegations must be established by clear and convincing evidence. *A.N.J.*, 690 N.E.2d at 720. Because subsection (b)(2)(B) is written in the disjunctive, however, the trial court need find only one of the two elements by clear and convincing evidence. *Bester v. Lake County Office of Family and Children*, 839 N.E.2d 143, 153 n.5 (Ind. 2005).

In reviewing the termination of parental rights, we will neither reweigh the evidence nor judge the credibility of witnesses. *A.N.J.*, 690 N.E.2d at 720. We consider only the evidence most favorable to the judgment. *Id.* In deference to the trial court's unique position to assess the evidence, we will set aside a judgment terminating a parent-child relationship only if it is clearly erroneous. *L.S.*, 717 N.E.2d at 208.

Mother first asserts that the OFC failed to demonstrate a reasonable probability that the continuation of her parental relationship with S.B. poses a threat to S.B.'s well-

being. We note that, in this case, the trial court also found that the conditions resulting in S.B.'s removal have not been remedied, and it is that finding we shall address. *See* I.C. § 31-35-2-4(b)(2)(B).

To determine whether the conditions are likely to be remedied, the trial court must examine the parent's fitness to care for the child "as of the time of the termination hearing and take into account any evidence of changed conditions." *In re S.P.H.*, 806 N.E.2d 874, 881 (Ind. Ct. App. 2004). The trial court, however, also must determine whether there is a substantial probability of future neglect or deprivation. *Id.* "A court may properly consider evidence of a parent's prior criminal history, drug and alcohol abuse, history of neglect, failure to provide support, and lack of adequate housing and employment." *McBride v. Monroe County Office of Family and Children*, 798 N.E.2d 185, 199 (Ind. Ct. App. 2003).

Here, the OFC removed S.B. from Mother's home because Mother's then-boyfriend, Haven, physically abused S.B. The evidence reveals that, as of the final hearing, Mother had married and was living with Haven and that Mother intended to continue living with Haven. Additionally, Mother had missed several visits with S.B. because she was traveling with Haven, had failed to obtain employment and had not had her driver's license reinstated.

In this case, there is ample evidence that the conditions resulting in S.B.'s removal will not be remedied. Accordingly, the trial court's finding that the conditions were not likely to be remedied is not clearly erroneous.<sup>2</sup>

Mother also challenges the trial court's finding and determination that termination of her parental rights is in S.B.'s best interest. For the "best interest of the child" statutory element, the trial court is required to consider the totality of the evidence and determine whether the custody by the parent is wholly inadequate for the child's future physical mental, and social growth. *In re J.K.C.*, 470 N.E.2d 88, 91 (Ind. Ct. App. 1984). In making this determination, the trial court must subordinate the interest of the parent to that of the child involved. *Id.*

The totality of the evidence in this case demonstrates a clear showing that termination of the parent-child relationship between Mother and S.B. was proper. Mother failed to obtain employment and although she established housing just before the final hearing, she did so with Haven, who had abused S.B. Fleming testified that she felt it would be in S.B.'s best interests to terminate Mother's parental rights, that S.B. and his brother, Sc.B., were residing with a foster family, and "there is a great possibility that the foster home . . . would want to adopt them." (Tr. 12).

We find that the record contains sufficient evidence that termination of Mother's parental rights is in the best interests of S.B. Thus, the elements necessary to sustain the

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<sup>2</sup> Again, the trial court must find the reasonable probability that the conditions, which resulted in the removal of the child, would not be remedied, *or* that the continuation of the parent-child relationship posed a threat to the well-being of the child. I.C. § 31-35-2-4(b)(2)(B) (emphasis added). Because we have found that the evidence supports the trial court's findings as to the former, we need not address Mother's contention that the OFC failed to prove the latter. *A.N.J.*, 690 N.E.2d at 721 n.2.

termination of Mother's parental relationship with S.B. were established by clear and convincing evidence.

Affirmed.

BAKER, J., and ROBB, J., concur.